

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY CABLE TELEVISION DIVISION

CABLE BULLETIN 00-2
August 4, 2000

RATE AND PROGRAMMING NOTICES

I. INTRODUCTION

Over the past several months, the Department of Telecommunications and Energy's Cable Television Division ("Cable Division") has noted an increase in consumer and municipal complaints about cable operators' practices with respect to notice of rate and programming changes. In an effort to better understand the issue, the Cable Division met with cable company representatives to review the specific procedures cable operators use to notify consumers, issuing authorities, and the Cable Division of rate and programming changes. We discovered that each of the cable operators interpreted our regulations slightly differently, resulting in confusion as to when, and by what means, notice must be given. The Cable Division now clarifies our notice requirements to avoid future confusion and to ensure that cable subscribers, issuing authorities, and the Cable Division are adequately protected and informed.

In this Bulletin, we interpret 207 C.M.R. ' 10.00 of our regulations as it relates to rate and programming changes. Specifically, we address the different methods used by cable operators to communicate these changes to the Cable Division, issuing authorities and cable subscribers. We also address changes to the federal law and their affect on our notification requirements.

II. NOTIFICATION REQUIREMENTS

The Cable Division's regulations require cable operators provide advance notice prior to implementing a rate increase or substantial change in programming. 207 C.M.R. § 10.02(2).

Specifically, subsection 10.02(2) requires:

At least 30 days prior to implementing an increase in one of its rates or charges or a substantial change in the number or type of programming services, the operator shall notify, in writing, the [Division], the issuing authority and all affected subscribers of the change and include a description of the increased rate or charge. The notice shall list the old and new rate or charge and, if applicable, the old and new programming services provided.

Cable operators' compliance with subsection 10.02(2) of our regulations ensures that cable subscribers receive notification within a reasonable period of time to fully consider their programming and pricing options before a change takes place. The required comparison of old and new programming in the notice is also essential to provide subscribers with a sufficient amount of information to fully assess the nature of the changes before such changes are instituted. Importantly, subscribers who request a downgrade within the 30-day period between the notice and the effective date of the change cannot be charged a downgrade fee. 207 C.M.R. ' 10.06(1)(b).

In addition to these requirements, our regulations require cable companies submit annually to the Cable Division and issuing authorities a Billing and Termination of Service filing that includes, among other things, their current rate cards and channel line-ups. 207 C.M.R. § 10.01(2); 207 C.M.R. § 10.02(6). If a cable operator amends any of the information contained in the Billing and Termination Filing, including the rate card and channel line-up, it is required to file the amended documents with the Cable Division and the issuing authority and to maintain a copy at the company's local office. 207 C.M.R. § 10.01(2); 207 C.M.R. § 10.02(6).

Federal law also requires cable operators to give 30 days written notice to subscribers and local franchising authorities before implementing any rate or service change. 47 C.F.R. ' 76.964(a). In addition, pursuant to federal law, the notice must state the amount of the change and a brief explanation of the cause of the change. Id. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Id. Recent changes in federal law, however, allow operators to use their sole discretion to provide reasonable written notice. 47 U.S.C. ' 552(c).

III. ANALYSIS

Massachusetts cable operators have historically complied with the written programming notification portion of subsection 10.02(2) by providing notice to subscribers in the form of a bill insert or separate mailing. While most cable operators continue to follow this practice, we have learned that some operators have moved away from providing programming notices in

this manner based on an interpretation of federal law that allows cable operators discretion to provide notice of service and rate changes using any reasonable written means. 47 U.S.C. ' 552(c). However, while subsection (c) does suggest that cable operators have a degree of discretionary power to select their own method of written notification, the FCC clarifies that local issuing authorities have the authority to determine that a particular mechanism is not reasonable. In re Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order, CS Docket No. 96-85, FCC 99-57, March 29, 1999.

Some cable operators apparently interpret the FCC's Order to allow them to rely solely on electronic bulletin board ("EBB") and newspaper advertisements to announce programming changes to subscribers. To the extent that programming changes are not substantial¹, the Cable Division finds that EBB and newspaper are an acceptable means of notification. Supplementing this, however, the Cable Division continues to require written notification of all programming changes, substantial or not, via regular mail to both the Cable Division and the issuing authorities so that we may appropriately respond to subscriber concerns. Cable operators should send the Cable Division the text of the subscriber notices, a new channel line-up to amend the cable operator's billing and termination of service filing, and a copy of the letter issued to issuing authorities as confirmation that proper notification has been issued.

After investigation, we determine that newspaper and EBB publication are not reasonable as the sole means of providing notice of substantial changes in programming services. Newspaper advertisements are not a direct method of communication with each subscriber, and we have received many complaints that these notices are not effective. Further, EBB is not a tangible or static reference that subscribers may rely on to locate specific information at their own convenience. Therefore, we determine that EBB and newspaper advertisements are not sufficient forms of written notification under 207 C.M.R. ' 10.02(2). We require all cable operators to provide 30-day advance notice of substantial programming changes in the form of a written notice either as a bill insert or through a separate mailing to the subscriber's residence. Representative copies of these notices should be sent to the Cable Division and issuing authorities at the time they are issued. All programming notices, whether they are by EBB, newspaper, bill insert, or separate mailing, must include a comparison of the old and new programming services.

¹ The Cable Division has determined that the exchange or elimination of one channel does not constitute a substantial change. Letter to Patrick E. O'Malley, Town of Lunenburg, November 23, 1993; Cable Division letter to Cable Operators, August 24, 1993. However, channel realignments or channel changes that result in a fundamental change to the nature of a service tier are substantial and therefore trigger our notification requirements. Cable operators may ask the Cable Division in advance of programming changes for a determination of whether such changes are to be considered substantial on a case-by-case basis.

For rate changes, operators may only satisfy the written notice requirement by mailing written notice to subscribers at least 30 days in advance of the change. Pursuant to subsection 10.02(2) of our regulations, all rate change notices must include a description of the change and a comparison of the old and new rates.

In response to many complaints that 30-day advance notice is not being met by operators that stagger bills and notices to subscribers throughout the month on different cycles, we clarify that operators using cycle billing may continue to provide notice of rate changes to subscribers during different periods throughout the month as long as 30 days pass between a subscriber's notice and the beginning date of their next billing period. We find this reasonable because rate changes take effect at the beginning of a subscriber's billing period instead of on a fixed date. However, because programming changes become effective for all subscribers on a fixed date, programming notices sent in a bill insert at the end of the month for a late cycle subscriber are insufficient if such changes are effective at the beginning of the following month.

We note that our regulations are minimum standards. We appreciate and encourage operators' efforts to provide more notice wherever possible. At least one company repeats the notice of major changes 5 days before the change occurs. Others combine several methods, including direct mailing, to ensure effective notice of each change. When rate and programming changes are paired with major marketing initiatives, we request that cable operators forward the marketing materials to us so that we may retain the materials for our files in order to respond to consumer inquiries.

The Cable Division will address specific notification problems on a case-by-case basis. If we find the circumstances surrounding a rate notification are unreasonable, we may order the delayed implementation of a rate change or refunds or credits to affected subscribers. Faulty notices may also result in the Cable Division requiring extended time frames for free downgrades.

Any questions regarding the Cable Division's notification regulations should be directed to the Cable Division at 617-305-3580 or via email at mcable@state.ma.us.